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STATUTORY INSTRUMENTS

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**1992 No. 3204**

**The Registered Homes (Northern Ireland) Order 1992**

**PART II**

**RESIDENTIAL CARE HOMES**

*Meaning of “residential care home”*

**3.—(1)** Subject to paragraph (2), in this Order “residential care home” means any establishment which provides or is intended to provide, whether for reward or not, residential accommodation with both board and personal care for persons in need of personal care by reason of—

- (a) old age and infirmity;
- (b) disablement;
- (c) past or present dependence on alcohol or drugs; or
- (d) past or present mental disorder.

(2) The definition in paragraph (1) does not include—

- (a) any establishment which is used, or is intended to be used, solely as a nursing home;
- (b) any hospital which is vested in the Department or managed by an HSS trust;
- (c) any private hospital, as defined in Article 90(2) of the Mental Health (Northern Ireland) Order 1986(1);
- (d) any voluntary home or HSS home within the meaning of the Children and Young Persons Act (Northern Ireland) 1968(2) or any home or hostel provided under Part VII of that Act;
- (e) a university, or an institution of further education, college of education or school within the meaning of the Education and Libraries (Northern Ireland) Order 1986(3);
- (f) any establishment managed or provided by a government department, a Board, an HSS trust or by any other body constituted by a statutory provision or incorporated by Royal Charter;
- (g) any other establishment excepted from that definition by regulations.

(3) In paragraph (1)—

“disablement”, in relation to persons, means that they are substantially and permanently handicapped by illness, injury, congenital deformity, sensory impairment or any other prescribed disability;

“mental disorder” has the meaning given by Article 3 of the Mental Health (Northern Ireland) Order 1986(4).

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(1) 1986 NI 4  
(2) 1968 c. 34 (N.I.)  
(3) 1986 NI 3  
(4) 1986 NI 4

(4) In this Order “personal care” includes the provision of appropriate assistance in counteracting or alleviating the effects of any of the matters mentioned in paragraph (1)(a) to (d) and, in particular, includes—

- (a) action taken to promote rehabilitation;
- (b) assistance with physical or social needs; and
- (c) counselling.

*Requirement of registration*

4.—(1) Subject to paragraphs (3) and (4), any person who carries on a residential care home without being registered under this Part in respect of it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Where the manager or intended manager of a residential care home is not in control of it (whether as owner or otherwise) both the manager or intended manager and the person in control are to be treated as carrying on or intending to carry on the home and accordingly as requiring to be registered under this Part.

(3) Where—

- (a) one person only is registered under this Part in respect of a residential care home; and
- (b) that person dies,

his personal representatives or his widow or any other relative of his may for a period not exceeding 4 weeks from his death, or such longer period as the Board may sanction, carry on the home without being registered in respect of it.

(4) Registration under this Part is not required in respect of a small home—

- (a) if the only persons for whom it provides or is intended to provide residential accommodation with both board and personal care are persons carrying on or intending to carry on the home or employed or intended to be employed there or their relatives; or
- (b) in such other cases as may be prescribed.

(5) In this Order a “small home” means an establishment which provides or is intended to provide residential accommodation with both board and personal care for fewer than 4 persons, excluding persons carrying on or intending to carry on the home or employed or intended to be employed there and their relatives.

(6) The references in paragraphs (4) and (5) to the persons for whom residential accommodation is or is intended to be provided relate only to persons who are in need of personal care by reason of any of the matters mentioned in Article 3(1)(a) to (d).

(7) A person who—

- (a) is required to be registered under this Part in respect of a small home; and
- (b) is registered under Part III in respect of the same premises,

may apply to be registered under this Part as if the home were not a small home.

(8) If he does so the provisions of this Part have effect as in relation to a home which is not a small home.

(9) Registration under Part III does not affect any requirement to register under this Part.

*Offence to hold out premises as residential care home unless registered*

5.—(1) A person who, with intent to deceive any person,—

- (a) applies any name to premises; or

(b) in any way so describes premises or holds premises out, as to indicate, or reasonably be understood to indicate, that the premises are a residential care home shall be guilty of an offence unless registration has been effected under this Part in respect of the premises.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Registration-general*

6.—(1) Each Board shall, for the purposes of this Part, maintain a register of residential care homes in such form and containing such information as may be prescribed.

(2) The register maintained under paragraph (1) shall be available for inspection at all reasonable times and any person inspecting the register shall be entitled to make copies of entries in the register on payment of such reasonable fee as the Board may determine.

(3) An application for registration under this Part shall be made to the Board and shall be accompanied by a registration fee of such amount as may be prescribed.

(4) Subject to Articles 8, 11 and 12, on receipt of an application for registration and of the registration fee the Board shall register the applicant in respect of the home named in the application and issue to him a certificate of registration.

(5) A registration fee shall not be payable in the case of an application of a prescribed description and, in the case of an application for registration in respect of a small home, the Board may waive the whole or part of the registration fee; and in either such case the references in paragraphs (3) and (4) to the registration fee shall be construed as references to such registration fee (if any) as may be payable.

(6) The certificate of registration issued under paragraph (4) in respect of a home other than a small home shall be kept affixed in a conspicuous place in the home.

(7) If default is made in complying with paragraph (6), any person registered in respect of the home shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale and to a further fine not exceeding one-tenth of level 2 on the standard scale for each day on which the offence continues after conviction.

(8) The Department may by regulations—

(a) require persons registered in respect of residential care homes to pay an annual fee of such amount as the regulations may specify; and

(b) specify when the fee is to be paid.

(9) In the case of registration in respect of a small home, the Board may waive the whole or part of the annual fee, and in such a case the reference in Article 9(b) to the annual fee shall be construed as a reference to such annual fee (if any) as may be payable.

#### *Conditions of registration*

7.—(1) Subject to paragraph (2), the registration of any person in respect of a residential care home shall be subject to such conditions (to be specified in the certificate of registration issued under Article 6(4)) as the Board considers appropriate.

(2) It shall be a condition of the registration of any person in respect of a residential care home that the number of persons for whom residential accommodation with both board and personal care is provided in the home at any one time (excluding persons carrying on or employed at the home and their relatives) does not exceed such number as may be specified in the certificate of registration.

(3) Without prejudice to the generality of paragraph (1), the conditions imposed under that paragraph by a Board on the registration of any person in respect of a residential care home may include conditions for regulating the age, sex or category of persons who may be received in the home.

(4) The Board may from time to time—

- (a) vary any condition for the time being in force in respect of a home by virtue of this Part; or
- (b) impose an additional condition, either on the application of a person registered in respect of it or without such an application.

(5) The power of the Board to vary any condition mentioned in paragraph (4)(a) includes, subject to paragraph (2), the power to cancel any such condition; and references in this Part to the variation of a condition by the Board shall be construed accordingly.

(6) If any condition for the time being in force in respect of a home by virtue of this Part is not complied with, any person registered in respect of the home shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### *Refusal of registration*

**8.—**(1) The Board may refuse to register an applicant for registration in respect of a residential care home (other than a small home) if it is satisfied—

- (a) that—
  - (i) the applicant,
  - (ii) any person concerned or intended to be concerned in carrying on the home, or
  - (iii) any person employed or proposed to be employed at the home,
 is not a fit person to carry on or (as the case may be) be employed at the home;
- (b) that for reasons connected with their situation, construction, state of repair, accommodation, staffing or equipment, the premises used or intended to be used for the purposes of the home, or any other premises used or intended to be used in connection with it, are not fit to be so used; or
- (c) that the way in which it is intended to carry on the home is such as not to provide services or facilities reasonably required.

(2) The Board may refuse to register an applicant for registration in respect of a small home only if it is satisfied that he or any other person concerned or intended to be concerned in carrying on the home is not a fit person to be concerned in carrying on a residential care home.

#### *Cancellation of registration*

**9.** The Board may at any time cancel the registration of a person in respect of a residential care home—

- (a) on any ground which would entitle it to refuse an application for the registration of that person in respect of that home;
- (b) on the ground that the annual fee in respect of the home has not been paid on or before the due date;
- (c) on the ground—
  - (i) that that person has been convicted of an offence under this Order or any regulations made under it in respect of that or any other residential care home or any nursing home;

- (ii) that any other person has been convicted of such an offence in respect of that home;  
or
- (iii) that any condition for the time being in force in respect of the home by virtue of this Part has not been complied with;
- (d) in the case of a small home, on the ground that the annual return has not been duly made in accordance with regulations under Article 15.

*Urgent procedure for cancellation of registration, etc.*

**10.**—(1) If—

- (a) the Board applies to a justice of the peace for an order—
  - (i) cancelling the registration of a person in respect of a residential care home;
  - (ii) varying any condition for the time being in force in respect of a home by virtue of this Part; or
  - (iii) imposing an additional condition; and
- (b) it appears to the justice of the peace that there will be serious risk to the life, health or well-being of the residents in the home unless the order is made,

he may make the order, and the cancellation, variation or imposition shall have effect from the date on which the order is made.

(2) An application under paragraph (1) may be made *ex parte* and shall be supported by a written statement of the Board's reasons for making the application.

(3) An order under paragraph (1) shall be in writing.

(4) Where such an order is made, the Board shall serve on any person registered in respect of the home, as soon as is practicable after the making of the order,—

- (a) notice of the making of the order and of its terms; and
- (b) a copy of the statement of the Board's reasons which supported its application for the order.

(5) A notice under paragraph (4)(a) shall be accompanied by a notice explaining the right of appeal conferred by Article 14.

*Ordinary procedure for registration, etc. by Board*

**11.**—(1) Subject to paragraph (2), where—

- (a) a person applies for registration under this Part; and
- (b) the Board proposes to grant his application,

the Board shall give him written notice of its proposal and of the conditions subject to which it proposes to grant his application.

(2) The Board need not give notice of such a proposal if it proposes to grant the application subject only to conditions which—

- (a) the applicant specified in the application; or
- (b) the Board and the applicant have subsequently agreed.

(3) The Board shall give an applicant notice of a proposal to refuse his application.

(4) Except where it makes an application under Article 10 and subject to paragraph (5), the Board shall give any person registered in respect of a residential care home notice of a proposal—

- (a) to cancel the registration;

- (b) to vary any condition for the time being in force in respect of the home by virtue of this Part; or
- (c) to impose any additional condition.

(5) The Board need not give a person registered in respect of a residential care home notice of a proposal such as is mentioned in paragraph (4)(b) or (c) if the variation or additional condition in question is to be made or imposed on the application of, or with the agreement of, that person.

(6) A notice under this Article shall give the Board's reasons for its proposal.

#### *Right to make representations*

**12.**—(1) A notice under Article 11 shall state that within 14 days of service of the notice any person on whom it is served may in writing require the Board to give him an opportunity to make representations to it concerning the proposal.

(2) Where a notice has been served under Article 11, the Board shall not determine the matter until either—

- (a) any person on whom the notice was served has made representations concerning the matter; or
- (b) the period during which any such person could have required the Board to give him an opportunity to make representations has elapsed without the Board being required to give such an opportunity; or
- (c) the conditions specified in paragraph (3) are satisfied.

(3) The conditions mentioned in paragraph (2) are—

- (a) that a person on whom the notice was served has required the Board to give him an opportunity to make representations to the Board concerning the matter;
- (b) that the Board has allowed him a reasonable period to make his representations; and
- (c) that he has failed to make them within that period.

(4) Representations may be made, at the option of the person making them, either in writing or orally.

(5) If a person informs the Board that he desires to make oral representations, the Board shall give him an opportunity of appearing before and of being heard by the Board.

#### *Decision of Board*

**13.**—(1) If the Board decides to adopt the proposal, it shall serve notice in writing of its decision on any person on whom it was required to serve notice of the proposal.

(2) A notice under this Article shall be accompanied by a notice explaining the right of appeal conferred by Article 14.

(3) Subject to paragraph (4), a decision of the Board under this Part shall not take effect—

- (a) if no appeal is brought, until the expiration of the period of 28 days referred to in Article 14(3); and
- (b) if an appeal is brought, until it is determined or abandoned.

(4) Paragraph (3) does not apply to—

- (a) a decision to grant an application for registration subject only to such conditions as are mentioned in Article 11(2);
- (b) a decision to refuse an application for registration; or

- (c) a decision to vary any condition for the time being in force in respect of a residential care home by virtue of this Part or to impose any additional condition if the variation or additional condition is made or imposed on the application of, or with the agreement of, any person registered in respect of that home.

#### *Appeals to Registered Homes Tribunal*

**14.**—(1) An appeal against—

- (a) a decision of a Board under this Part; or
- (b) an order made by a justice of the peace under Article 10,

shall lie to a Registered Homes Tribunal.

(2) An appeal shall be brought by notice in writing given to the Board.

(3) No appeal against a decision or order may be brought by a person more than 28 days after service on him of notice of the decision or order.

(4) On an appeal against a decision of a Board the tribunal may confirm the decision or direct that it shall not have effect.

(5) On an appeal against an order made by a justice of the peace the tribunal may confirm the order or direct that it shall cease to have effect.

(6) A tribunal shall also have power on an appeal against a decision or order—

- (a) to vary any condition for the time being in force in respect of the home to which the appeal relates by virtue of this Part;
- (b) to direct that any such condition shall cease to have effect; or
- (c) to direct that any such condition as it thinks fit shall have effect in respect of the home.

(7) A Board shall comply with any direction given by a tribunal under this Article.

#### *Annual return in respect of small home*

**15.**—(1) The Department may by regulations require a person registered under this Part in respect of a small home to make an annual return to the Board.

(2) Provision may be made by the regulations as to the contents of the return and the period in respect of which and date by which it is to be made.